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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FOUR

In re M.K., a Person Coming Under the
Juvenile Court Law.

ALAMEDA COUNTY SOCIAL
SERVICES AGENCY,

Plaintiff and Respondent,

v.

K.C.,

Defendant and Appellant.

A125393

(Alameda County
Super. Ct. No. HJ06005641)

K.C. (mother) appeals a juvenile custody and visitation order terminating dependency jurisdiction over her daughter, M.K., pursuant to Welfare and Institutions Code section 362.4.¹ The juvenile court awarded sole physical and legal custody of the minor to the minor's father, and ordered mother to pay for supervised visitation between her and the minor. Mother argues that the court erred in ordering her to pay for supervised visitation and by denying her joint legal custody of her daughter. We disagree and affirm.

¹ All statutory references are to the Welfare and Institutions Code except where otherwise noted.

I.
FACTUAL AND PROCEDURAL
BACKGROUND

On November 29, 2006, respondent Alameda County Social Services Agency (Agency) filed a petition under section 300, subdivision b (failure to protect). The petition alleged that mother had left the one-and-a-half year old minor home alone with the front door open and with open toxic substances and alcohol near the minor, and that mother exhibited irrational and irate behavior that interfered with her ability to care for the minor. The petition also alleged that the minor's father (father), who is not a party to this appeal, had failed to protect the minor by (1) returning her to mother in violation of an informal family maintenance case plan agreement and (2) failing to obtain legal custody of the minor as instructed by family court. The juvenile court ordered the minor released to father after a detention hearing.

Following an uncontested jurisdictional/disposition hearing on December 14, 2006, the minor was adjudged a dependent child. The juvenile court ordered family maintenance services for father and the minor, and family reunification services for mother and the minor. Mother was to have 13 hours of visitation with the minor each week, and the visits were to be supervised by the maternal grandmother. However, only one visit (which ended early) had taken place by late February 2007 because a conflict developed between mother and the maternal grandmother. In an interim review report, the social worker described mother as "extremely volatile, defensive and, at times paranoid" during their interactions, and that communication with mother had been difficult "because of her argumentative, loud and abusive style of conversation with the Child Welfare Worker and her difficulty understanding what the Child Welfare Worker was trying to convey."

On February 27, 2007, a supplemental dependency petition was filed alleging that father had left the minor in mother's care in violation of court orders, and the minor was removed from father's custody following a hearing the next day. The supplemental petition was withdrawn on May 10, 2007, and the minor was returned to father.

The Agency reported several problems between mother and father that interfered with visitation. For example, father reported to the social worker that mother tried to run him and his girlfriend off the road after father dropped off the minor for a visit at the home of the maternal grandmother. A few days later, father failed to bring the minor for a visit, believing that visitation had been stopped. The social worker described mother and father in an interim review report as “very immature and irresponsible,” and stated that they were “unable to problem solve situations whether in person or by phone, have others . . . do their problem solving and take care of matters; and are unwilling to agree to disagree; all the while dismissing the fact that perhaps their daughter has emotional needs. They constantly blame one another and fabricate stories so that you never get the real picture of what is actually happening. They are both demanding, not willing to listen to others and when they don’t get their way they become verbally abusive and outraged with anger.” The juvenile court ordered that there be no contact between mother and father.

The Agency filed a supplemental dependency petition on November 30, 2007, alleging that father had failed to comply with court orders and with his case plan, and that he had expressed that he was “overwhelmed in caring for the minor.” The minor was again removed from father’s custody, and she was placed with the maternal grandmother. The minor was continued as a dependent child on December 19, 2007. At a review hearing on March 11, 2008, the juvenile court ordered that the social worker had discretion to arrange unsupervised visits among the minor, mother, and father, consistent with the best interests of the minor. The Agency reported in a status review report dated May 6, 2008, that father realized he needed a support system to help in providing care to the minor, and that he was engaged to be married to a woman who was willing to provide such support.

A combined 18-month review hearing and hearing on a petition for a change in court order (§ 388) filed by mother was heard over eight days, in July, August,

September, November, and December 2008.² Following a hearing in early July, the juvenile court ordered that there be a 30-day trial visit between the minor and father, and the visit started on July 10, 2008. The court later ordered that the trial visit continue until August 28, 2008.

The court also ordered that mother have six-hour visits on Fridays, and that the visits with mother were “to occur with no excuses.” The social worker later reported that mother became “irate” and “verbally abusive” after a transportation unit was late driving the minor to a scheduled visit, and mother was escorted out of the building by sheriff’s deputies.

The juvenile court ordered on December 1, 2008, that supervised visits were to take place between the minor and mother once each week for up to two hours, and that the visits would be held at Terra Firma or Safe Exchange. The social worker reported that the first visit did not go ahead as scheduled on December 6, and the Agency filed with the juvenile court a letter from Terra Firma stating that mother had refused to complete intake paperwork, and that she had become belligerent with staff members. Mother and father were then referred to Safe Exchange, but as of December 22, neither parent had completed intake.

Following the close of evidence submitted in connection with the 18-month review hearing, the juvenile court on January 20, 2009, ordered that the appropriate permanent plan was to place the minor in the home of father. The minor was continued as a dependent child, family reunification services to mother were terminated, and family maintenance services were ordered continued for father. The court also ordered that the minor and mother have visits in a therapeutic setting, that the parties “do whatever [is] necessary to commence those visits,” and that the social worker have discretion to modify the visits.

The social worker reported that father completed his intake appointment with Alternative Family Services (AFS) in order to begin therapeutic visits, but that AFS had

² The record on appeal does not include reporter’s transcripts for any of these hearing dates.

trouble contacting mother because her telephone service had been disconnected. A permanency worker at AFS later testified that mother did not show up for her first scheduled visit on February 17, 2009. Another visit was scheduled for February 24, but mother objected because she was not available at the designated time. According to the AFS worker, she asked mother for another date when she would be available, but mother told her she was not available and that the worker should not contact her again. As of March 11, the family's file had been closed because of three missed appointments by the parents. The Agency social worker also asked mother when she was available for visits, but mother refused to give the social worker any available times, stating that she would provide the information "in court."

Father told the social worker on April 6, 2009, that the police had come to his house for a welfare check after mother reported that the minor was being abused, and that he had received "threatening" messages from mother on his cell phone. Father said that "he had no intention of cooperating with the mother's visits in the future." In an interim review report dated April 28, 2009, the Agency recommended that the minor remain a dependent, and that family maintenance services be continued for father.

At a hearing on May 12, 2009, the parties, their attorneys, and the social worker were ordered to cooperate in order for mother and the minor to have therapeutic visits. Mother was ordered to contact AFS within 48 hours, and she was to provide verification that she had signed up with an agency to have therapeutic visits with the minor.

Father testified at a review hearing on May 26, 2009, that he did not believe that the minor should have contact with mother. He testified that the minor loved mother, but that she would get her hopes up about seeing mother, "and then all that happens is the mother loses it, blows up, or something happens, and you're leaving a child with no mom. . . . We [have] been going through this for years now and it's just—it should be obvious to everybody and plain to see that the mother is not interested in the best interests of this child" According to father, he had been receiving from mother several "harassing phone calls threatening my life, saying that she basically blame[d] all this—I'm responsible for all of this."

In an interim review report dated June 15, 2009, the Agency recommended that the minor's dependency be dismissed in its entirety and that the juvenile court award sole legal and physical custody to father. The social worker reported that the minor had been placed on a waiting list at Safe Exchange for supervised visitation. She was also referred to two other agencies, but the agencies could not take her because of her Medi-Cal status. The social worker offered to supervise a visit at the home of the maternal grandmother, but the mother objected to the social worker supervising, called the social worker "a 'ho' and used other curse words," and told the social worker she was going to sue and wanted to be " 'let out' " of dependency proceedings. The social worker stated that she had made several unsuccessful attempts to coordinate therapeutic visits between the minor and mother, and that she was recommending that the case be dismissed because the family was not willing to participate in services.

The review hearing continued on June 15, 2009. Counsel for the Agency argued that because father was properly caring for the minor, and because mother was not cooperative in arranging therapeutic visits and in fact had threatened the social worker, it would be in the minor's best interests to dismiss the matter, and the parties could address visitation in family court. Mother's counsel argued that mother was willing to have joint legal and physical custody over the minor. Father testified that if the juvenile court awarded him sole custody, he would work with the maternal grandmother to facilitate visits with mother, but that if it were up to him, visits between the minor and mother would end. He explained, "I know [the minor] loves her mother. But if it's always going to be detrimental to my daughter and her mental stability and she's got to deal with yelling, all types of drama and accusations, I'm not going to participate in that at all."

Mother testified in a rambling manner that she contacted AFS eight or nine times to begin therapeutic visitation but that the minor had not been signed up for visits, that she did not want visits held at the Agency because she was constantly harassed by workers, that father also harassed her and then testified that she had made no efforts to have visitation, and that the minor begged over the telephone to be with her. Mother also testified that if father was granted sole legal and physical custody over the minor, "[t]he

problem would be [father] would try to make me be his slave as far as sexual-wise. . . . He will try to treat me like a slave. I'm not going to be a slave to him, so basically it will be I'm not going to see my daughter unless I'm his personal slave for sexual, come and do all his laundry, come and give him rides when his car get[s] towed."

The juvenile court dismissed dependency, concluding that the court "can no longer be of any assistance to the parents in this case." The court stated, "It's unfortunate that the visits that this Court has ordered between [the minor] and her mother have not occurred or occurred as I expected them to occur and I believe the evidence indicates there's many reasons for that. Part of it, I believe strongly, is that the mother just has not cooperated in allowing these visits to occur." The court declined to award joint custody as requested by mother, and instead awarded legal and physical custody to father, who was properly caring for the minor.

As for visits between mother and the minor, the juvenile court ordered that the minor and mother have supervised visits at Safe Exchange, or any other agency that provided supervised visits, once a week for up to two hours, and that mother pay for the cost of the supervised visits. If mother visited consistently with the minor for eight consecutive weeks, visits could be supervised in the home of the maternal grandmother thereafter.³ Mother's counsel raised a concern about the cost of supervised visits and asked whether a fee waiver was available. The court responded that mother would "have to check with whatever agency she selects to do those visits. Although I will indicate based upon her own testimony of her working—" Mother interrupted and stated, "I don't work anymore." The court continued, "I think she actually said Bar attorney [an apparent reference to mother's representation while trying to schedule the review hearing that she

³ Consistent with this ruling, a custody order was filed on June 22, 2009, stating: "Visits will be once per week for up to two hours. The mother is responsible for any fees charged by the agency for supervision. If the mother's visits are consistent: no missed visits except if it is due to illness and for 8 weeks, the visits can occur at the maternal grandmother's . . . home. The mother must choose either a Saturday or Sunday for the visits at the maternal grandmother's house and keep the chosen day. Neither parent will make derogatory comments about the other in front of the minor."

started a new business and was being paid to help people in small claims court], but we'll leave it at that.” No other objection was raised regarding the visitation order.

Mother timely appealed.

II. DISCUSSION

A. Disentitlement Doctrine.

Respondent argues that mother is barred by the disentitlement doctrine from challenging the juvenile court's custody and visitation order, and that this court should exercise its discretion to dismiss her appeal. We decline to do so.

“A reviewing court has the inherent power to dismiss an appeal by any party who has refused to comply with trial court orders. [Citation.] The disentitlement doctrine is based on the equitable notion that a party to an action cannot seek the assistance of a court while the party ‘stands in an attitude of contempt to legal orders and processes of the courts of this state. [Citations.]’ [Citation.] A formal judgment of contempt, however, is not a prerequisite to exercising our power to dismiss; rather, we may dismiss an appeal where there has been willful disobedience or obstructive tactics. [Citation.]” (*In re Claudia S.* (2005) 131 Cal.App.4th 236, 244.) The principle that a court may refuse to assist a party who fails to comply with a court order has been applied in dependency proceedings. (*In re C.C.* (2003) 111 Cal.App.4th 76, 85 [mother's refusal to participate in psychological evaluation frustrated court's ability to evaluate whether mental disability rendered her incapable of using reunification services]; *Guardianship of Melissa W.* (2002) 96 Cal.App.4th 1293, 1299 [grandparents and counsel “thwarted the very judgment of which they now seek review” by causing minor to be removed to Bahamas in violation of court order]; *In re Kamelia S.* (2000) 82 Cal.App.4th 1224, 1227 [father could not appeal order placing his daughter in foster care after he abducted her].)

Here, by contrast, although there is evidence that mother might have violated previous placement and visitation orders, there is no evidence before us that she has violated *the order from which she has appealed*. (Cf. *Guardianship of Melissa W.*, *supra*,

96 Cal.App.4th at p. 1299.) The disentitlement doctrine therefore does not apply under the facts of this case.

B. Juvenile Court's Visitation Order.

Mother challenges the conditions placed on visitation with her daughter. Section 362.4 provides, in relevant part: “When the juvenile court terminates its jurisdiction over a minor who has been adjudged a dependent child of the juvenile court prior to the minor’s attainment of the age of 18 years . . . the juvenile court on its own motion, may issue a protective order . . . and an order determining the custody of, or visitation with, the child. [¶] Any order issued pursuant to this section shall continue until modified or terminated by a subsequent order of the superior court. . . . [¶] If no action is filed or pending relating to the custody of the minor in the superior court of any county, the juvenile court order may be used as the sole basis for opening a file in the superior court of the county in which the parent, who has been given custody, resides.” (See also *In re Jennifer R.* (1993) 14 Cal.App.4th 704, 712.) The juvenile court is authorized to order visitation subject to various conditions. (*In re Chantal S.* (1996) 13 Cal.4th 196, 203-204 [juvenile court authorized to condition custody or visitation on parent’s participation in counseling program].) We review the juvenile court’s custody and visitation order for abuse of discretion. (*Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 300.)

1. Cost of supervised visitation

Mother first claims that “[t]he requirement that [she] pay for visitation in a professional setting was tantamount to foreclosing visitation to a financially challenged mother.” As evidence that mother was indigent, she points to the fact that she was represented by court-appointed counsel below.⁴ Respondent highlights evidence presented over the course of proceedings that mother had financial resources. However, no evidence was presented *at the hearing regarding visitation* on mother’s financial

⁴ She also points to evidence that two agencies were not able to facilitate supervised visitation because of *the minor’s* Medi-Cal status.

circumstances at the time of the termination of jurisdiction. There likewise was no evidence presented regarding the cost of supervised visitation.

Mother contends that it is “reasonable to infer” that she did not have the means to retain private counsel, and it follows that she could not pay for supervised visits. On the record before us, however, it would be speculation to conclude that mother does not have the means to pay for supervised visitation. Should the cost of supervision truly be an obstacle to visiting with the minor, mother is not without recourse. As the juvenile court stated when issuing its juvenile custody and visitation order, the visitation order could “always be modified upon showing of changed circumstances in the family law court.” (See § 362.4.)

2. Vagueness of visitation order

Mother also claims that the juvenile court’s directions regarding visitation were “vague” and “uncertain.” First, we agree with respondent that mother waived this objection by not raising it below. (*In re Christopher B.* (1996) 43 Cal.App.4th 551, 558 [“In dependency litigation, nonjurisdictional issues must be the subject of objection or appropriate motions in the juvenile court; otherwise those arguments have been waived and may not be raised for the first time on appeal.”].) Had mother raised any concerns about the vagueness of the terms of the visitation order, the juvenile court could have clarified them if necessary.

Even assuming that this issue was not waived, it lacks merit. Mother claims that it is not clear whether supervised visitation was to occur in a “therapeutic setting.” Although the juvenile court had *previously* ordered that visits be held in a therapeutic setting, the final custody order included no such provision, and there is thus no ambiguity about whether therapeutic visits were required.

Mother also claims that the juvenile court’s order was vague as to reporting requirements. After the juvenile court ordered that supervised visits take place at Safe Exchange, the social worker reported that the parents were on the waiting list at that agency. The juvenile court responded, “If Safe Exchange cannot do the supervised visits, then Terra Firma can do them or any place that does supervised visits. There’s many

groups that do supervised visits. I'm not going to limit it. I'll actually leave it up to [mother] to select who does the supervised visits, but I want it to be at least initially for that first eight weeks at an agency like Safe Exchange, Terra Firma, where they have formal supervised visits *that give feedback to somebody.*" (Italics added.) Mother claims on appeal that the "somebody" in the court's description was never identified, rendering the visitation order "nebulous" and "uncertain." To the contrary, the juvenile court was simply attempting to describe the type of agency where mother could schedule visits. More to the point, the juvenile court did not order that the agency selected to supervise visitation report to "somebody." The juvenile court's written custody order simply provides that visits would be "[s]upervised at Safe Exchange (or similar visitation site of mother's choosing)," with no provision that feedback be provided to anyone. We reject mother's vagueness argument.⁵

3. Necessity of supervision by agency

Mother also argues that it was "unnecessary" to order visitation at an agency, because visits could take place at the home of the maternal grandmother, with the grandmother acting as monitor. The juvenile court stated that it wished that visits would occur but that "there always seems to be some obstacle of why they don't occur and, unfortunately, I think most of the obstacles are being thrown up by the mother herself for various reasons unknown to this Court, quite frankly." The court apparently wanted mother to establish a track record of visitation before visits were to occur at the maternal grandmother's home in the future, explaining, "I do not find that it would be in the best interest of [M.K.] for the visits, as far as the details of the visits, to be determined by the parents. I don't think the parents have the ability, quite frankly, to actually communicate

⁵ We also reject respondent's argument that the " 'somebody' the lower Court referred to is, as a matter of law, the Superior Court itself." Although it is true that section 362.4 contemplates that the superior court will have jurisdiction over enforcement and modification of the juvenile court's visitation order following termination of dependency proceedings (*In re Chantal S.*, *supra*, 13 Cal.4th at p. 213), the statute does not contemplate that visitation agencies will necessarily provide "feedback" to the superior court.

well enough to work out a visitation plan. I'm hoping that that will change in the future.” It then ordered that supervised visitation occur eight times at an agency before visitation began at the maternal grandmother’s home. Given the overwhelming evidence in the record that mother’s behavior was unpredictable, volatile, and abusive in connection with visits, including during visits at the home of the maternal grandmother, we cannot say that the juvenile court abused its vast discretion in ordering that mother’s first visits with the minor be supervised at an agency.

C. Legal Custody of the Minor.

Mother contends that the juvenile court abused its discretion by awarding sole legal custody of the minor to father, and that it instead should have awarded joint legal custody of the minor to both her and father.⁶ Joint legal custody means that both parents share the right and responsibility to make decisions relating to a child’s health, education, and welfare. (Fam. Code, § 3003.) In ruling on custody in dependency cases, the juvenile court’s primary consideration must always be the best interests of the child, taking into consideration all relevant circumstances. (*In re Chantal S.*, *supra*, 13 Cal.4th at p. 206; *In re Nicholas H.* (2003) 112 Cal.App.4th 251, 268; *In re John W.* (1996) 41 Cal.App.4th 961, 973; *In re Jennifer R.*, *supra*, 14 Cal.App.4th at p. 712.) The juvenile court here found that father was properly caring for the minor, and that “it just [did] not make sense to this Court, based upon all the evidence, that the parties share legal custody.”

Mother acknowledges that she “may” have had “a somewhat difficult personality,” but she argues there was “no need to exclude her from decision making in order to protect [M.K.]” She contends that her “situation stands in stark contrast” with that of the mother in *In re Jennifer R.*, *supra*, 14 Cal.App.4th 704, who had documented “emotional and intellectual deficiencies.” (*Id.* at p. 710.) Even if mother’s situation is distinguishable from that of the parent in *Jennifer R.*, a review of the circumstances in this case supports the juvenile court’s award of sole legal custody to father. There was abundant evidence

⁶ Mother does not challenge the award of sole physical custody to father.

that mother was incapable of communicating effectively with father, or with anyone else involved in the dependency proceedings. Father was caring well for the minor, but he was being harassed by mother. It was reasonable to conclude that it was not in the best interests of the minor to award joint legal custody to mother and father, and we find no abuse of discretion in awarding sole legal custody to father.

III.
DISPOSITION

The juvenile court's order is affirmed.

Sepulveda, J.

We concur:

Reardon, Acting P.J.

Rivera, J.